

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition to Terminate  
Probation for:**

**Dinh Truong Nguyen, M.D.**

**Physician's and Surgeon's  
Certificate No. A 122677**

**Respondent.**

**Case No. 800-2021-077303**

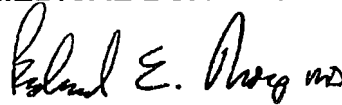
**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision  
and Order of the Medical Board of California, Department of Consumer  
Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on March 2, 2023.**

**IT IS SO ORDERED January 31, 2023.**

**MEDICAL BOARD OF CALIFORNIA**



**Richard E. Thorp, M.D. , Chair  
Panel B**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition to Terminate Probation by:**

**DINH TRUONG NGUYEN, M.D.,**

**Physician's and Surgeon's Certificate No. A 122677,**

**Respondent.**

**Agency Case No. 800-2021-077303**

**OAH No. 2022100021**

**PROPOSED DECISION**

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by video and teleconference on November 17, 2022.

Petitioner Dinh Truong Nguyen, M.D., appeared and represented himself.

Brenda P. Reyes, Deputy Attorney General, appeared under Business and Professions Code section 2760.1 and Government Code section 11522.

Oral and documentary evidence was received. Complainant moved for a protective order sealing certain documents. There was no opposition and the motion

was granted. A protective order will issue concurrent with this decision sealing exhibits 5, 6, and F, and pages B33 and B34 of exhibit L.

The record was closed and the matter was submitted on November 17, 2022.

## **FACTUAL FINDINGS**

### **Jurisdiction and Disciplinary History**

1. On August 29, 2012, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate number A 122677 to petitioner. The certificate was in full force and effect at all relevant times and is scheduled to expire on November 30, 2023.

2. On March 7, 2016, on the petition of Kimberly Kirchmeyer, Executive Director of the Board (complainant), an administrative law judge issued an ex parte Interim Suspension Order, suspending petitioner's license and imposing terms and conditions pending a hearing on an Accusation.

3. On April 7, 2016, complainant executed an Accusation against petitioner in case number 04-2013-231442 (2016 Accusation). The 2016 Accusation set forth two causes for discipline, for petitioner's criminal conviction for involuntary manslaughter and for petitioner's use of dangerous drugs.

4. On the morning of April 3, 2013, petitioner ran a red light, crashed into an oncoming car, and killed the driver. Petitioner told officers he was taking Advair for asthma, Cymbalta for depression, and Nasonex and Intermezzo for insomnia. When the officers inspected petitioner's car, they saw several prescription medication packets. Petitioner failed several field sobriety tests. He was arrested and taken to the

local jail, where he told another police officer he felt sluggish that morning, especially since he normally takes only one sleeping pill but took two the previous evening. He said the medication makes him loopy and he may have fallen asleep while driving.

5. On August 13, 2015, respondent pled guilty to violating Penal Code section 191.5, subdivision (b) (vehicular manslaughter while intoxicated), and violating Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance). The court sentenced petitioner to serve one year in county jail and placed petitioner on five years' supervised probation. Petitioner's driving privileges were suspended for three years.

6. On May 12, 2017, the Board issued a Decision effective June 9, 2017 (Decision), adopting a Stipulated Settlement and Disciplinary Order. In the stipulated settlement, petitioner agreed that the charges and allegations in the 2016 Accusation, if proven at hearing, would constitute cause for license discipline and that complainant could establish a factual basis for the charges.

7. In its Decision, the Board revoked petitioner's certificate, stayed the revocation, and placed petitioner on seven years' probation with terms and conditions. Those terms and conditions included requiring that petitioner abstain from personal use or possession of controlled substances and dangerous drugs other than those lawfully prescribed to him for a bone fide illness or condition; abstain from alcohol use; perform 100 hours of free services for a community or non-profit organization; attend a professionalism course in ethics; undergo a medical evaluation; undergo a clinical diagnostic evaluation for substance abuse as a condition precedent; check in daily and submit to random biological fluid testing; attend substance abuse support group meetings; use a worksite monitor; and not supervise physician assistants and advanced practice nurses.

8. The Decision became effective on July 7, 2017, after a June 9, 2017 order staying the decision expired, and petitioner's probation period began.

9. Petitioner filed a Petition for Termination of Probation, dated April 19, 2021. This hearing ensued.

### **Petition for Reinstatement**

10. Petitioner has been on probation for nearly five and one-half of the seven years the Board ordered. Probation is scheduled to terminate in July 2024. Petitioner has complied with the terms and conditions of probation. His only violations have been two occasions on which he failed to timely call in for biological fluid testing. These two failures were addressed and require no disciplinary action. He successfully completed his criminal probation in September 2020. His conviction was reduced to a misdemeanor and his attorney is filing an application for expungement.

11. Petitioner wrote in a statement accompanying his petition that "not a single day that goes by that I do not think about what happened and how much it has affected everyone involved. I live with guilt and regret from the tragedy that I have caused. I am ashamed and remorseful." (Ex. B, p. B4.) Petitioner wrote that on the night before the accident, he took an Ambien before midnight but woke up an hour later and, "against my better judgment," took another one. (*Ibid.*) He had not been prescribed Ambien; the pills he took were samples his supervisor, a physician, gave him at his request. He believes he fell asleep while driving.

12. At the time of the accident, petitioner was doing general practice and family medicine, as well as urgent care and minor surgery. He was employed by a multispecialty medical group, Dao Medical Group. After his release from jail, petitioner was fired. "I was unemployed and had nowhere to go. I was at the lowest point in my

life, as low as when my mother died during my first year of college. Luckily, I was able to stay with my aunt and her family.” (Ex. B, p. B4.) Feeling depressed and hopeless, petitioner worked hard to rehabilitate himself. He was eventually hired by Long Beach Urgent Care, where he went for his probationary urine testing. When he was allowed to drive again, he worked in internal medicine in Fountain Valley, then found a job with Robert Hashemiyoan, M.D., performing liposuction. After that, he began his current position at Curved By Lipo in Corona. He has been there almost a year, performing liposuction. He enjoys doing procedures, but if his probation is terminated early, he would like to return to urgent care, general practice, and minor surgery.

13. Since March 2016, petitioner has been enrolled in the Outpatient Substance Abuse Program at KC Services in Garden Grove. He began the program as part of his criminal probation, and the Board allowed him to continue there in order to comply with the Board’s probation terms. He attended group meetings twice per week for ninety minutes for the first three months, then once per week thereafter. As an adjunct to the program, he also began attending Narcotics Anonymous meetings several times a month; he currently participates via Zoom or phone calls weekly. At KC Services, group participants talked about their struggles. Petitioner learned that a person could be triggered or experience a craving at any time. A lot of patients there were struggling. Petitioner learned coping skills and how to stay away from danger. He learned his trigger for Ambien use was sleeplessness caused by stress. Though most people in the program are there due to using heroin or methamphetamine, not Ambien, petitioner learned he could be just like the other substance abusers if he is not careful, because it can happen to anybody. He learned he must be vigilant at rehabilitation, which is lifelong.

///

14. From June through September 2017, petitioner was enrolled in the First-Time Offender Program (AB 541) at the Alcohol Education and Recovery Center in Long Beach, California. He attended meetings weekly for a total of thirty-one hours and completed the program.

15. In compliance with the Board's Decision, in 2017 petitioner underwent a clinical diagnostic evaluation and a medical evaluation.

a. James L. Gagné, M.D., a diplomate of the American Board of Pain Medicine, the American Board of Internal Medicine, and the American Board of Addiction Medicine, conducted the clinical diagnostic evaluation on June 13, 2017. Dr. Gagné found that petitioner caused the fatal automobile accident in 2013 due to accidental sedative intoxication. Dr. Gagné found no apparent addiction or impairment and no psychiatric illness, and concluded that petitioner's prognosis was excellent. "I find no evidence for [a] medical, addiction, or psychiatric disorder. [Petitioner] has ceased all sedative and hypnotic use since the 4/13 accident." (Ex. 6, p. A45.) Dr. Gagné found that petitioner is not a danger to himself, patients, or the public, his ability was not impaired by mental or physical illness affecting competency, and he did not require psychotherapy or medical or psychiatric treatment in order to practice medicine safely. "I find no basis to suggest that [petitioner's] practice should be restricted in any way." (Ex. 6, p. A42.)

b. Felix Horng, M.D., with the Hoag Medical Group, conducted petitioner's medical evaluation on August 3, 2017. In his report to the Board, Dr. Horng wrote that petitioner "does not currently present apparent danger to himself, patients, or the public. [Petitioner's] ability to practice medicine is not impaired by any signs of medical illness affecting competency." (Ex. 5, p. A40.)

16. In September 2017, petitioner attended a 22-hour continuing medical education course in Medical Ethics with Professional Boundaries, Inc. at the University of California, Irvine. The course included pre-attendance, six-month follow-up, and twelve-month follow-up assignments. Since then, petitioner has also taken several on-line short courses in medical ethics and substance abuse with Medscape.

17. Since December 2017, petitioner has contributed over 127 volunteer hours with the Long Beach Rescue Mission, where he cooks and serves meals to homeless people; he also volunteers with the Long Beach Poly Junior Athletic Association. At the beginning of the pandemic, petitioner signed up with the California Health Corps to help combat COVID-19, but was disqualified due to being on probation.

18. Petitioner has been tested for alcohol and drugs randomly for over five years without a single refusal to test, missed test, or positive test. He has tested for the Board 258 times, including 244 urine tests, nine blood tests, and five hair follicle tests. He has also taken another 100 tests with Orange County Probation and KC Services. All results have been negative for illegal drugs, alcohol, opioids, and benzodiazepines. Petitioner has only missed two check-ins, once on the first day when he was unable to log in due to a credit card issue, and once when he forgot to call in during Thanksgiving. He immediately wrote and offered to test. He has abstained from alcohol and drugs throughout probation, completed his community service, and completed six- and 12-month follow-ups to the professionalism program. He continues to attend substance abuse group meetings and worksite meetings with monitors.

19. Over the last few years, petitioner has modified his life in order to improve himself. He stopped consuming alcohol seven years ago, in July 2015. The last



time he took Ambien was nine years ago, the day of his arrest in 2013. He has never used any illicit drugs. He has no prescription for sleep medication and does not use any. To help him sleep, petitioner listens to YouTube documentaries at low volume and takes ZzzQuil or chamomile tea. He also has a healthier lifestyle; he became a vegetarian, exercises, and finds frequent prayer helpful. He prays and does a rosary every day, which very much helps relieve stress and helps prevent sleeplessness. All these changes have helped petitioner feel better mentally, emotionally, and physically.

20. Petitioner relies on his family and his girlfriend for emotional support. Since getting out of jail, he has lived with his aunt and uncle; he sees and calls his father and sisters often.

21. Being on probation has made it difficult for petitioner to find a job with consistent hours and decent pay for an extended period of time. That in turn has made it a challenge for him to make monthly payments to the deceased driver's family, which he owes as a result of a civil lawsuit. Probation also made petitioner ineligible to volunteer with the California Health Corps to combat COVID-19 or to go on medical missions abroad, a serious disappointment to petitioner.

22. Petitioner submitted two character reference letters.

a. In a letter dated April 7, 2021, Dr. Hashemiyoon, Chief Executive Officer and Chief Medical Officer at Los Angeles Liposuction Centers, wrote that he has worked closely with petitioner since November 2019 as petitioner's direct supervisor. Dr. Hashemiyoon has also served as petitioner's worksite monitor since January 2021. He recognizes petitioner as "a hard-working, skilled, and compassionate physician-surgeon with great moral character. He is well-loved by his patients and by people

who work with him.” (Ex. C.) Petitioner disclosed to Dr. Hashemiyooun the reason for his probation.

I saw that he was ashamed and remorseful of the incident and I was convinced that it would not happen again. I recognized that this was a one-time mistake and that he possessed many good qualities that would make him a valuable asset to our practice and the community he would serve. So I hired him and I could not be more pleased with this decision. In his short time with us, he has excelled in his work and has been promoted to Medical Director of my practice, Downey Liposuction Centers. . . .<sup>[1]</sup> My impression is that [petitioner] is fully rehabilitated and I recommend, without reservation, his petition for penalty relief to be accepted.

*(Ibid.)*

b. In a letter dated April 12, 2021, Jack B. Vu, M.D., an urgent care physician with Memorial Care Medical Group and a coworker of petitioner’s at Dao Med Group before the 2013 accident, supported the petition. Dr. Vu wrote that he has known petitioner for almost a decade, worked closely with him at Dao Medical Group, and keeps in touch with petitioner.

I have been practicing medicine for almost two decades and I have yet to meet a doctor more dedicated to his patients than Dr. Dinh Nguyen. His compassion for other human beings is extraordinary, He comes to work early, leaves late,

and always keep[s] a positive attitude. He goes above and beyond what was required to ensure his patients receive the best possible care. His compassion for people extends beyond just his patients, as he treats his colleagues, staff members, and people he hardly knows with kindness and respect. . . . [¶] Patients love him and people enjoy working with him. [¶] I have also had the privilege of knowing Dr. Nguyen outside of work. I know him to be a simple and honest person who is deeply spiritual. He has a passion to help the less fortunate and do good for the community. He has aspirations to go on medical missions and do humanitarian work in impoverished areas around the world. He has shared with me his great regret regarding his actions and the tragedy he caused that lead him to being in legal troubles, including probation with the Board. I find him to be sincere, remorseful, and rehabilitated.

(Ex. D, p. B8.)

23. Petitioner believes he does not pose a risk of re-offending, and that terminating probation early will allow him to better serve his community. If probation is terminated, petitioner plans to continue attending Narcotics Anonymous meetings, though perhaps a little less frequently. He will accept whatever probation conditions the Board may impose.

///

///

## LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving his rehabilitation and fitness to practice medicine. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.)

2. The administrative law judge hearing the petition "may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The Board shall evaluate petitioner's evidence of rehabilitation considering the relevant criteria including the nature and severity of the acts for which the petitioner was disciplined; the time that has elapsed since commission of those acts; and evidence of rehabilitation submitted by the petitioner. (Cal. Code Regs, tit. 16, §1360.2.)

3. Protection of the public "shall be the highest priority" for the Board and administrative law judges in exercising their disciplinary authority. (Bus. & Prof. Code, § 2307, subd. (a).)


4. Petitioner has sustained his burden of proof. The physicians performing his clinical diagnostic and medical evaluations found no substance abuse and no reason petitioner should not return to practice without restriction. Petitioner has expressed remorse, acknowledged abusing Ambien prior to the accident, stopped using Ambien and alcohol in 2013 and 2015, respectively, began attending and benefitting from support group meetings, never tested positive for prohibited substances, and complied with all terms of probation. He has completed more than

five of the seven years of probation. He offered strong letters of support. There is no evidence in the record of petitioner posing any ongoing threat to the public and there is no further benefit to society of further probation. (Factual Findings 1-23.)

## **ORDER**

The petition of Dinh Truong Nguyen, M.D., Physician's and Surgeon's Certificate number A 122677, to terminate probation is granted.

DATE: 12/08/2022

  
Howard W. Cohen (Dec 8, 2022 09:58 PST)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings